

# Law and Morality

PHIL/PA/POL 324, Summer 2021

Asynchronous Online, Five Week First (June 7–July 8)

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## 1. Course Overview and Objectives

What is the relationship between law and morality? Can a morally indefensible law nonetheless be *legally* valid? Is civil disobedience ever justifiable, and, if so, under what circumstances? When judges interpret the law, do they follow moral principles even if those principles were never really enacted into the law by a legislature? Should they? Are there ever cases where the law just “runs out,” and, if so, how should judges decide them? Or, is there always a *right* answer as to how a case should be decided, distinguishable from the final answer given by a court of last resort such as the U.S. Supreme Court? In this course, we will survey leading answers to these questions from the philosophy of law and consider their jurisprudential implications for a variety of issues central to feminist, antiracist legal theory. Our focus here will be on the interpretation and application of the Equal Protection Clause of the 14th Amendment. First, we will consider the arguments behind the Supreme Court’s landmark holdings in *Brown v. Board of Education* (1954) that the racial segregation of public education is inherently unequal, and in *Loving v. Virginia* (1967) that a state law criminalizing interracial marriage violates both the equal protection and due process requirements of the 14th Amendment. Second, we will examine and critically assess the development of the Court’s gender equality jurisprudence under the 14th Amendment and Title VII of the Civil Rights Act of 1964. We will attend especially to ways in which gender inequality may be obscured by a lack of appreciation of intersectional discrimination and structural subordination. To illustrate intersectional discrimination, we will look at the Court’s very recent holding in *Bostock v. Clayton County* (2020) that firing an employee because of their sexual orientation or gender identity necessarily constitutes sex discrimination in violation of Title VII. As for structural subordination, we will turn

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1. If you are not familiar with the use of “they” as a singular pronoun, I encourage you to check out this helpful guide from the APA Style blog: <https://apastyle.apa.org/blog/singular-they>.

to Catharine MacKinnon's influential argument that the sexual harassment of women is a case of sex *discrimination*. We will then try to apply these important insights to two rapidly developing areas of law—reproductive freedom and transgender equality.

## 2. Expected Learning Outcomes

My expectations are, at the conclusion of this course, you will be able to

1. Explain the disagreement between natural law theory, legal positivism and legal interpretivism on the relationship between law and morality;
2. Illustrate various aspects of the relationship between law and morality in the contexts of judicial discretion, constitutional and statutory interpretation, civil disobedience, racial equality, gender equality, sexual harassment, reproductive freedom, and LGBTQ+ equality;
3. Charitably interpret and critically assess philosophical texts and arguments;
4. Compose a well-reasoned, original argumentative essay that responds to a philosophical issue at the intersection of law and morality;
5. Discuss how philosophical reflection may shed light on contested moral and legal issues in a divided contemporary society such as the United States;
6. Discuss how conceptual tools may help to clarify and express minority experiences that are otherwise masked by oppressive social structures.

PHIL 324 is cross-listed in Political Science and Public Administration and Policy.

## 3. Required Texts

- Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination*, Yale University Press, 1976. Paperback, 9780300022995. (Please be sure to look for used copies. We will start reading the book at the beginning of Week 3.)

All other required readings will be made available digitally on D2L or via the university library.

If there are any barriers (technical, financial or otherwise) that make it difficult for you to access any of the readings, please let me know.

## **4. Teaching Format, Suggestions and Expectations**

As our course will be delivered entirely online in an asynchronous format, it's really important that you understand how the course works, how best to approach it, and what is expected of you.

### *4.1. D2L*

You will find all course materials on the course D2L site. Each week's content will typically be made available on Monday morning. However, before you can access course content, you are required to submit a statement that you have read this syllabus in its entirety.

If you have never used D2L before, I strongly encourage you to complete the short D2L New Student Orientation (<https://help.d2l.arizona.edu/content/student-orientation-course>). Two other helpful resources are the D2L help pages (<https://help.d2l.arizona.edu>) and the university's 24/7 IT support (<https://it.arizona.edu/service/247-it-support>).

I'm also happy to help you troubleshoot technical issues. I understand how frustrating these things can be, but I also would not be able to help if there weren't enough time. So, please be proactive and don't wait until close to a deadline to ask for help.

### *4.2. Course Structure*

Our course is divided into 12 modules, each of which is roughly equivalent to two to three classes in the semester-long, synchronous version of this course. I try to distribute the workload more or less evenly, but some modules will still be longer than others.

**For the first four weeks of the course, you are expected to complete three modules each week.** No modules are assigned to the fifth and final week so you can spend the time on your final essay and final exam.

For each module, please:

1. Do all assigned readings as you follow and complete the reading guide;
2. Watch all assigned lectures; and
3. Participate in the weekly discussion board.

There is no firm deadline by which you must do the readings and watch the lectures. However, the reading guides, discussion posts and all other assignments must be completed by specific deadlines.

If there are life circumstances that prevent you from participating in the course or meeting certain deadlines, please let me know as soon as possible. Please see § 7.2 for course policies on late assignments, extensions and make-ups.

#### *4.3. Optional Virtual Coffee Hours*

I will host a virtual coffee hour at the end of every week. The coffee hour is exactly what it sounds like: it's a coffee hour, not another lecture. It's also strictly optional (there's no extra credit for coming). I will be there to answer questions you have or just to chat more about something that caught your interest. I will circulate a doodle poll early on in the week, and I will try to rotate the time so that as many people as possible can participate. If you have suggestions, I'd like to know!

#### *4.4. Are You New to Philosophy or Law? (Welcome!!)*

The readings assigned in this course are unique in that they are written by legally-minded philosophers and philosophically-minded legal scholars. For this reason, they can be challenging to read, especially if you are new to philosophy or law. It's *okay* if you feel you don't understand every word (a good dictionary is always your friend!), or that you do understand every word but just can't put them together in a way that makes sense, or that you more or less understand all the sentences but are still at sea about what exactly the author is saying or doing. These experiences are *normal*.

You should expect to read the text (or at least certain parts of it) more than once. Reading philosophy/law is not a talent we are born with; rather, it is a skill that has to be acquired through practice. There is a lot to learn just from the *process* of putting effort into making sense of these difficult readings. I hope you will find the reading guides particularly useful, and please never be afraid to come to office hours to discuss passages you find puzzling!

#### *4.5. Writing Groups*

Philosophy itself is also written in a distinct style that's often not obvious and again takes practice to learn. Midway through the course, you will be assigned to a two- or three-person writing group, where you will be asked to exchange drafts with each other. The writing group will not only provide valuable opportunities for you to receive feedback from your peers, but by reading and reviewing the writing of others you will become a better writer yourself.

#### *4.6. Workload*

The university requires at least 135 hours of work by each student for a 3-credit course like ours, and so you should expect to spend an average of **27 hours every week** working on this course. Around a third will be so-called contact hours—that is, watching recorded lectures, discussing and working with your peers, and discussing with the instructor. The rest will be spent on readings and assignments.

I understand this is not a trivial time commitment. I also know you are already working incredibly hard by taking a summer course. What I really hope to see, then, is that all of you will get the most out of this educational experience. You will find the hours you spend reading, thinking, discussing and writing very rewarding in the end.

#### *4.7. Please Do Not Procrastinate!*

Procrastination is probably the biggest impediment to success in an online course. Given the fast pace of our 5-week format, there may be little time for you to catch up if you fall behind. **Please do all the readings, don't wait until the last minute to rush through the lectures, remember to turn in assignments on time, and start thinking about your final essay early.** The modular structure is in place to help you keep track of your progress, but most will still depend on your own efforts!

### **5. Respect, Support and Care for One Another**

#### *5.1. Materials in This Course*

Since many of the issues we will cover in this course are also *personally* relevant, you might find it difficult to read and discuss certain course materials. I want to acknowledge that. It's perfectly understandable.

It's therefore important that we *respect, support and care for* one another throughout the course. Please always feel free to talk to me if you anticipate certain topics will be especially difficult for you, or if you think the way they get discussed in the class is disrespectful or otherwise problematic.

#### *5.2. How to Respect, Support and Care for One Another*

Here are some concrete examples of how you can respect, support and care for your classmates and instructor:

### *Class Discussion*

- Value everyone's contribution to class discussion;
- Disagree in a way that takes other people's ideas seriously and sincerely;
- Challenge remarks, jokes and examples that are racist, sexist, misogynistic, xenophobic, homophobic, biphobic, transphobic, ableist, ageist, classist, etc.;
- Keep discussions inclusive by avoiding talking to only a few specific people;
- Be mindful of how your tone/meaning might not be accurately conveyed through your writing alone (for example, if your question might be misunderstood as a rhetorical one, it's probably a good idea to indicate explicitly that it is a genuine question);
- For the virtual coffee hour, use your go-by name as your Zoom display name and, *if* you feel comfortable and safe doing so, include your pronouns next to it.

### *Gender Identity and Sexual Orientation*

- Use the pronouns and name you are asked to when you refer to a person;
- Avoid assuming a person's pronouns, gender identity or sexual orientation based on their appearance, voice or name;
- Be careful not to disclose anyone's gender identity or sexual orientation (i.e., out them) without their permission, even if they are already out in the classroom—it can put lives in danger;
- Never inquire about anyone's genitalia, deadname, "before" photos, medical history, assigned gender at birth, sex life, and so on;
- Use inclusive language (for helpful examples, see <https://www.apaonline.org/page/nonsexist> and <https://transjournalists.org/style-guide>).

If you feel any aspect of this course makes it difficult for you to participate fully, I want to know. This is *very* important to me.

### *5.3. University Statements on Discrimination, Harassment and Threatening Behavior*

The University of Arizona is committed to creating and maintaining an environment free of discrimination. In support of this commitment, the University prohibits discrimination, including harassment and retaliation, based on a protected classification, including race, color, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity, or genetic information. For more information, including how to report

a concern, please see <http://policy.arizona.edu/human-resources/nondiscrimination-and-anti-harassment-policy>.

Our classroom is a place where everyone is encouraged to express well-formed opinions and their reasons for those opinions. We also want to create a tolerant and open environment where such opinions can be expressed without resorting to bullying or discrimination of others.

The UA Threatening Behavior by Students Policy prohibits threats of physical harm to any member of the University community, including to oneself. See <http://policy.arizona.edu/education-and-student-affairs/threatening-behavior-students>.

## 6. Assessment

Reading Guides	30%
Structured Discussion Posts	15%
Final Essay (Draft, Peer Review & Revision)	30%
Take-Home Final Exam	25%

Both the final essay and the final exam must be completed with at least a passing grade in order to pass this course. **An F received on any work due to academic dishonesty is grounds for an F in the course.**

### 6.1. Grade Scheme

The University of Arizona Standard Letter Grade Scheme will apply:

A	90% and above	D	60%–69.9%
B	80%–89.9%	E	59.9% and below
C	70%–79.9%		

Requests for incomplete (I) or withdrawal (W) must be made in accordance with university policies, which are available at <http://catalog.arizona.edu/policy/grades-and-grading-system>.

### 6.2. Reading Guides

The reading guides are designed to walk you through the assigned readings by helping you identify the key claims, concepts, distinctions and argumentative steps. Occasionally, they

will also explain relevant philosophical and historical background to help you understand the readings better. As you do the readings, please follow the questions on the reading guide and identify the relevant passages in the text that address them.

Some of the reading guide questions are **bolded**. If a question is bolded, please write out a brief answer. If a question is not bolded, you don't need to answer it, but you are encouraged to write the page number of the relevant passage next to the question on the reading guide (doing so will make it easier for you to locate the passage later).

I will provide a reading guide for each module. The reading guides are due on the **Saturday of the corresponding week by 10pm**, and they will make up 30% of your final grade.

### 6.3. Structured Discussion Posts

The discussion topics offer opportunities for you to apply what you have learned in class to current issues in the law that build on but go beyond the lectures. Each discussion topic will focus on an ongoing or recent court case, covering issues such as the shadow docket, criminal justice and civil rights. In each disucssion topic, you will be assigned one of two different roles:

- *Pump Primer*: As a pump primer, you will be asked to read the assigned case. You will then either write an initial post (roughly 500–700 words) or record a video presentation (roughly 7–10 minutes) in which you will (1) explain to the class what the case is about, what questions it raises and what arguments have been offered (keep in mind your classmates have *not* read the case, so think about how to be accessible!) and (2) defend the way you think the case should or should have come out. I will provide instructions tailored to each discussion topic. The pump primer's post is due to the discussion board on the **Saturday of the corresponding week by 10pm**.
- *Participant*: Most students will contribute to the discussion by responding to the pump primer's post (if there's more than one pump primer, one of the posts) and replies by fellow discussion participants. As a participant, you are not expected to read anything assigned to the pump primer. But you should write at least one reasonably elaborated reply (two short paragraphs or one long paragraph should be enough) that engages critically with the *substance* of the issue. There are many ways you can do this. For example, you can raise an objection to an argument (e.g., "Andrea argues for A on the grounds that B, but B is false, and here is why"), provide a further consideration that doesn't seem to have drawn enough attention (e.g., "we've been talking about A

and B, but I want to suggest that C is also relevant because D”), elaborate on someone else’s point (e.g., “Yuna points out A, and I think that’s a really important issue in light of B”), defend an argument against an objection (e.g., “Quinn doesn’t agree with Summer’s argument for A, but I believe Summer is right and here’s what they could say in response”), or offer your original argument (e.g., “some of us have argued for A by appealing to B, C or D; even though the rest of us don’t agree, we can all agree that E is true, and I think E is enough for making A true”). And if you notice a classmate’s point has not been picked up by anyone, try to respond to it first. The participant’s reply is due on the **corresponding Monday by 10pm**.

There will be a discussion topic for each of the four weeks we have new course content. You will be required to be a pump primer for one topic and a participant for the three others. I will circulate a sign-up form, and you must indicate your preferences by **Wednesday, June 9 at 10pm**. I will try my best to honor your preferences, but you may still be assigned a different role if not enough students sign up to be pump primers for a particular topic.

The structured discussion posts will make up 15% of your final grade.

#### *6.4. Final Essay (Draft, Peer Review & Revision)*

You will be asked to write a final essay for this course. The final essay should be 1500–2000 words (roughly 5–7 pages) long. I will distribute instructions and prompts in advance.

You must turn in a draft of your final essay by **Wednesday, June 30 at 10pm**. Failure to turn in a draft on time will be penalized by up to a full letter grade (10%) on the revision. The draft will not be graded, but it will receive feedback from both me and members of your writing group. You will read and comment on your writing group peers’ drafts as well. The peer review is due on **Sunday, July 4, by 10pm**.

The revision is expected to be substantive, and must respond to comments received. The revised draft should be accompanied by a one-page cover letter, in which the author will have the opportunity to reflect critically on the comments and explain how they have shaped the revision. The revised draft, along with the cover letter, is due on **Wednesday, July 7, by 10pm**.

The revised draft of the final essay will make up 25% of your final grade, and your participation in the peer review process another 5%.

### *6.5. Take-Home Final Exam*

There will be a comprehensive take-home final exam consisting of short answer and short essay questions. To account for time difference, I will distribute the exam questions at **8am on Thursday, July 8**, and you must turn in your answers **on or before 8am on Friday, July 9**. The exam will be open book and open notes, but you are not allowed to collaborate.

The take-home final exam will make up 20% of your final grade.

## **7. Grading Policies**

### *7.1. Anonymous Grading*

To help prevent potential implicit biases on my part, please prepare any work you turn in (excluding discussion posts) for anonymous grading by **providing only your UA student ID number**.

### *7.2. Time Zone*

Unless otherwise specified, all times and dates listed on this syllabus are **Mountain Standard Time (MST)**. MST is 7 hours behind the Coordinated Universal Time (UTC-7). Please be careful that MST is not the same as Mountain Time (MT) or Mountain Daylight Time (MDT), as Tucson does *not* observe Daylight Saving Time. By adjusting D2L settings, you can display deadlines according to your local time zone (see <https://help.d2l.arizona.edu/content/students-my-home-page#5>). Time zone issues are, *prima facie*, not legitimate excuses for late or missed assignments.

### *7.3. Late Assignments, Extensions and Make-Ups*

No late assignments will be accepted. However, an extension will normally be granted as long as you (1) have a clear plan for completing the assignment and (2) let me know your plan by email **no later than 6 hours before the deadline** (unless an emergency circumstance can justify a delay).

There is no need to show me any kind of documentation. This is an honor system, and I trust you not to abuse it. All I ask is you also be flexible and considerate with respect to extensions when you are in a position of power to do so.

As an instructor, I always appreciate students asking for extensions ahead of time when possible. Make-ups for missed assignments after the fact are generally disfavored, and will be granted only to accommodate unexpected and other extraordinary situations. We can always work something out, but it's important that you contact me as soon as you can.

## 8. Academic Integrity

### 8.1. *Code of Academic Integrity*

Students are encouraged to share intellectual views and discuss freely the principles and applications of course materials. However, graded work/exercises must be the product of independent effort unless otherwise instructed. Students are expected to adhere to the UA Code of Academic Integrity as described in the UA General Catalog. See <http://deanofstudents.arizona.edu/academic-integrity/students/academic-integrity>.

### 8.2. *Plagiarism*

I consider plagiarism to be a **very serious violation** of the university's Code of Academic Integrity, and you should as well. I strongly encourage you to review this helpful guide prepared by the university library: <https://new.library.arizona.edu/research/citing/plagiarism>. If you have any questions after reading it, please don't hesitate to ask me.

### 8.3. *Inappropriate Use of Class Notes and Course Materials*

Disseminating class notes or course materials beyond the classroom community, such as selling them to other students or to a third party for resale, is strictly prohibited. Violations to this rule are subject to the Code of Academic Integrity and may result in course sanctions. Additionally, students who use D2L or UA email to sell or buy such notes or course materials are subject to Student Code of Conduct violations for misuse of student email addresses. This misconduct may also constitute copyright infringement.

## 9. Student Support Resources

### *Campus Health Services*

- Campus Health: <https://health.arizona.edu>

- Counseling and Psych Services (CAPS): <https://health.arizona.edu/counseling-psych-services>
- Mental Health Tools from CAPS: <https://health.arizona.edu/mental-health-tools>

#### *Crisis Resources*

- National Suicide Prevention Lifeline: call 800-273-TALK (8255) or chat online at <https://suicidepreventionlifeline.org/chat>
- National Sexual Assault Hotline: call 800-656-HOPE (4673) or chat online (English and Spanish) at <https://www.rainn.org/resources>
- Love Is Respect (dating abuse helpline for youth between 13 and 26): call 866-331-9474, text “LOVEIS” to 22522 or chat online at <https://www.loveisrespect.org/get-help>
- Trevor Lifeline (for LGBTQ+ youth under 25): call 866-488-7386, or text “START” to 678-678 or chat online at <https://www.thetrevorproject.org/get-help-now>
- Trans Lifeline (operators are all trans/nonbinary people): call 877-565-8860 (English and Spanish)
- CAPS Crisis Resources: <https://health.arizona.edu/crisis-resources-and-hotlines>
- Dean of Students Office Student Assistance Services: <https://deanofstudents.arizona.edu/support/student-assistance>

#### *Food Security*

- Campus Pantry: <https://campuspantry.arizona.edu>

#### *Child Care*

- UA Childcare Choice Program for Students: <https://lifework.arizona.edu/programs/childcare-choice/student>

#### *LGBTQ+*

- List of Resources from the Office of LGBTQ Affairs: <https://lgbtq.arizona.edu/students>

#### *Disability*

- Disability Resource Center: <https://drc.arizona.edu/>

#### *Academic Advising*

- Find Your Philosophy Advisor: <https://philosophy.arizona.edu/advising>
- Become a Philosophy Major: <https://philosophy.arizona.edu/why-study-philosophy>

### *Writing*

- Think Tank Writing Center: <https://thinktank.arizona.edu/writing-center>
- Writing Skills Improvement Program: <https://wsip.arizona.edu>

## **10. Accessibility and Accommodations**

Our goal in this classroom is that learning experiences be as accessible as possible. If you anticipate or experience physical or academic barriers based on disability, please let me know immediately so that we can discuss options. You are also welcome to contact the Disability Resource Center (520-621-3268) to establish reasonable accommodations. For additional information on the Disability Resource Center and reasonable accommodations, please visit <http://drc.arizona.edu>.

If you have reasonable accommodations, please plan to meet with me by appointment or during office hours to discuss accommodations and how my course requirements and activities may impact your ability to fully participate.

## **11. Absence and Class Participation**

The UA policy concerning class attendance, participation, and administrative drops is available at <http://catalog.arizona.edu/policy/class-attendance-participation-and-administrative-drop>.

The UA policy regarding absences for any sincerely held religious belief, observance or practice will be accommodated where reasonable: <http://policy.arizona.edu/human-resources/religious-accommodation-policy>.

Absences preapproved by the UA Dean of Students (or the Dean's designee) will be honored; see <http://policy.arizona.edu/employmenthuman-resources/attendance>.

## **12. Syllabus Change**

Information contained in the course syllabus, other than the grade and absence policy, may be subject to change with advance notice, as deemed appropriate by the instructor.

### **13. (Lack of) Diversity in Philosophy**

Unfortunately, philosophy as an institutionalized discipline is remarkably white, remarkably straight and remarkably cis male. This lack of diversity is often apparent just from the topics and authors typically taught in introductory philosophy courses. However, philosophy as a whole is becoming more and more diverse thanks to the efforts of several generations of philosophers. As a philosophy student, you can also help the profession address its diversity and inclusiveness problems by engaging with minority authors seriously and supporting your fellow minority students.

The American Philosophical Association (APA) has a useful handout for minority undergraduate students in philosophy, which you can read here: [https://www.apaonline.org/resource/resmgr/diversity/Advice\\_for\\_Undergrads.pdf](https://www.apaonline.org/resource/resmgr/diversity/Advice_for_Undergrads.pdf).

A valuable local opportunity is the Arizona Feminist Philosophy Graduate Conference organized annually by graduate students at the UA Department of Philosophy. The conference takes place in the spring semester. It brings together graduate students working on feminist issues from around the country and the world. You can find more information and watch recordings of past talks at <https://femphilaz.com>.

### **14. Schedule**

#### **Part I Law and Morality: Traditional Questions**

*Week 1 (June 7)*

Module 1    Introduction

Please read in advance:

- Lon Fuller, *The Morality of Law* (Rev. ed. 1969), Appendix
- U.S. Constitution, Article III; Amendments I–X, XIII–XV, XIX
- SCOTUSblog, “Supreme Court Procedure,” <https://www.scotusblog.com/reference/educational-resources/supreme-court-procedure>
- Stephen Vladeck, Statement before the Subcommittee on Courts, Intellectual Property, and the Internet of the Committee on the Judiciary, U.S. House of Representatives, February 18, 2021, <https://docs.house.gov/meetings/JU/JU03/20210218/111204/HHRG-117-JU03-Wstate-VladeckS-20210218-U1.pdf>

Check out these useful sites (I mean it—please click on the links and take some time to look around!):

- Oyez (audio recordings of Supreme Court arguments and opinion announcements): <https://www.oyez.org>
- SCOTUSblog (comprehensive source of Supreme Court news, commentaries and resources; not run by the Supreme Court!): <https://www.scotusblog.com>
- Supreme Court Website (opinions, orders, dockets, etc.): <https://www.supremecourt.gov>
- U.S. Supreme Court Records and Briefs, 1832-1978: <https://libguides.library.arizona.edu/usscrb> (UA login needed)
- Equality Case Files (comprehensive tracker of LGBTQ+ equality cases): <http://files.eqcf.org/recent-cases>

Module 2 Natural Law Theory and Legal Positivism: Classical Defenses

Please read in advance:

- Thomas Aquinas, *Summa Theologiae* I-II, Question 90; Question 94, Article 4; Question 95, Article 2; Question 96, Article 4
- John Austin, selections from *The Province of Jurisprudence Determined* (1832)

Module 3 Natural Law Theory and Legal Positivism: Contemporary Defenses

Please read in advance:

- H.L.A. Hart, *The Concept of Law* (2nd ed. 1994), pp. 79–110, 193–212
- Lon Fuller, *The Morality of Law*, pp. 33–41, 96–97, 153–62

Discussion Death Penalty and the Supreme Court’s Shadow Docket

Case for discussion:

- *United States v. Higgs* (2021)

**Preferences for discussion roles due on Wednesday, June 9, by 10pm**

Reading guides 1–3 due on Saturday, June 12, by 10pm

Pump primer’s post due on Saturday, June 12, by 10pm

Participant’s reply due on Monday, June 14, by 10pm

*Week 2 (June 14)*

Module 4 Judicial Discretion

Please read in advance:

- Ronald Dworkin, “The Model of Rules,” *University of Chicago Law Review* (1967)

Module 5 Constitutional and Statutory Interpretation

Please read in advance:

- Cases: *Plessy v. Ferguson* (1896); *Brown v. Board of Education* (1954); *Smith v. United States* (1993)
- Ronald Dworkin, *Law’s Empire* (1986), selections from chapter 7
- In Amy Gutmann, ed., *A Matter of Interpretation: Federal Courts and the Law* (1997):
  - Antonin Scalia, “Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws,” pp. 14–25, 37–47
  - Ronald Dworkin, “Comment,” pp. 115–27
  - Antonin Scalia, “Response,” pp. 144–49

Module 6 Civil Disobedience

Please read in advance:

- Case: *Walker v. City of Birmingham* (1967)
- Martin Luther King, Jr., “Letter from Birmingham Jail” (1963)
- John Rawls, selections from *A Theory of Justice* (1971)

Discussion Mandatory Sentencing Enhancement under the Armed Career Criminal Act (ACCA)

Case for Discussion:

- *United States v. Wooden* (6th Cir. 2019), scheduled for argument before the Supreme Court in October Term 2021

Reading guides 4–6 due on Saturday, June 19, by 10pm

Pump primer’s post due on Saturday, June 19, by 10pm

Participant’s reply due on Monday, June 21, by 10pm

## Part II Law and Morality: Feminist Perspectives

Week 3 (June 21)

### Module 7 The Intelligibility of Sex Discrimination

Please read/watch in advance:

- Early cases: *Bradwell v. Illinois* (1873); *Muller v. Oregon* (1908); *Goe-saert v. Cleary* (1948); *Hoyt v. Florida* (1961)
- A racial equality case: *Loving v. Virginia* (1967)
- Pauli Murray and Mary Eastwood, “Jane Crow and the Law: Sex Discrimination and Title VII,” *George Washington Law Review* (1965)
- Gender equality cases: *Reed v. Reed* (1971); *Frontiero v. Richardson* (1973); *Geduldig v. Aiello* (1974); *General Electric v. Gilbert* (1976); *Craig v. Boren* (1976); *United States v. Virginia* (1996)
- Statute: Pregnancy Discrimination Act of 1978
- Video: Interview with Justice Ginsburg, 00:00–35:50, <https://www.youtube.com/watch?v=umvkXhtbbpk>
- Handout: “Women’s Liberation Movement and the Law: A Chronology of Cases”

### Module 8 Critiques of the Sex Discrimination Doctrine: Intersectional Discrimination and Structural Subordination

Please read in advance:

- Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* (1989)
- Catharine MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (1979), chapter 5

### Module 9 Intersectional Discrimination: Sexual Orientation and Gender Identity Discrimination as Sex Discrimination

Please read in advance:

- In *Bostock v. Clayton County* (2020) (all page numbers refer to the slip opinion pdf, not the actual page number in the margin):
  - Opinion of the Court, pp. 5–11, 11–13 (skim), 13–16, 19–37

- Justice Alito’s dissent, pp. 38–41 (skim), 47–48, 51–54, 57–58, 60, 62 (under the “B” heading), 92–144 (look at the titles of the Appendices, scroll down the page, but do not read)

Discussion Employment Discrimination on a “Sex-Plus-Age” Basis

Case for Discussion:

- *Frappied v. Affinity Gaming Black Hawk* (10th Cir. 2020)

Reading guides 7–9 due on Saturday, June 26, by 10pm

Pump primer’s post due on Saturday, June 26, by 10pm

Participant’s reply due on Monday, June 28, by 10pm

*Week 4 (June 28)*

Module 10 Difference and Subordination: Sexual Harassment as Sex Discrimination

Please read in advance:

- Catharine MacKinnon, *Sexual Harassment of Working Women*, chapters 1, 2, 6
- Leslie P. Francis, “Feminist Philosophy of Law, Legal Positivism, and Non-Ideal Theory,” in *The Routledge Companion to Feminist Philosophy* (2017), pp. 702–9

Module 11 Autonomy and Equality: Barriers to Abortion Care Access as Sex Discrimination?

Please read in advance:

- Cases: *Griswold v. Connecticut* (1965); *Roe v. Wade* (1973); *Doe v. Bolton* (1973); *Maher v. Roe* (1977); *Harris v. McRae* (1980); *Planned Parenthood v. Casey* (1992); *Whole Woman’s Health v. Hellerstedt* (2016); *Juno Medical Services v. Russo* (2020)
- Ruth Bader Ginsburg, “Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*,” *North Carolina Law Review* (1987)
- Angela Davis, “Racism, Birth Control and Reproductive Rights,” in *Women, Race & Class* (1983)

Module 12 Autonomy, Equality and Subordination: Barriers to Public Facilities Access as Sex Discrimination?

Please read/watch in advance:

- CN Lester, *Trans Like Me: Conversations for All of Us* (2017), chapters 4 and 10
- *Doe v. Boyertown Area School District* (3d Cir. 2018)
- “Doe ex rel. Doe v. Boyertown Area School District,” *Harvard Law Review* (2019)
- Video: Aidan Destefano shares his experiences at Boyertown Senior High School, <https://www.youtube.com/watch?v=CQdYeKhW4k>
- U.S. Department of Justice Civil Rights Division, Memorandum on the Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972, March 26, 2021, <https://www.justice.gov/crt/page/file/1383026/download>

Discussion Access to Gender-Affirming Health Care

Case for discussion:

- *Toomey v. Arizona*, Amended Complaint and Order Denying Preliminary Injunction

**Draft of final essay due on Wednesday, June 30, by 10pm**

Reading guides 10–12 due on Saturday, July 3, by 10pm

Pump primer’s post due on Saturday, July 3, by 10pm

**Peer review of final essay due on Sunday, July 4, by 10pm**

Participant’s reply due on Monday, July 5, by 10pm

*Week 5 (July 5)*

**Revised draft of final essay and revision cover letter due on Wednesday, July 7, by 10pm**

Take-home final exam assigned on Thursday, July 8, at 8am

**Take-home final exam due on Friday, July 9, by 8am**